

1 UNITED STATES COURT OF APPEALS  
2 FOR THE SECOND CIRCUIT  
3

4 SUMMARY ORDER  
5

6 RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS  
7 FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE  
8 0.23 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A  
9 LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST  
10 ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION:  
11 "(SUMMARY ORDER)." UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE  
12 WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT  
13 HTTP://WWW.CA2.USCOURTS.GOV), THE PARTY CITING THE SUMMARY ORDER MUST FILE AND SERVE A  
14 COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED.  
15 IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE  
16 CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN  
17 WHICH THE ORDER WAS ENTERED.  
18

19 At a stated term of the United States Court of Appeals  
20 for the Second Circuit, held at the Daniel Patrick Moynihan  
21 United States Courthouse, 500 Pearl Street, in the City of  
22 New York, on the 27<sup>th</sup> day of September, two thousand seven.  
23

24 PRESENT:

25 HON. ROGER J. MINER,  
26 HON. PIERRE N. LEVAL,  
27 HON. CHESTER J. STRAUB,  
28 Circuit Judges.  
29

30 JIEMIN SHAO,  
31

32 Petitioner,  
33

34 v.

07-0069-ag  
NAC

35 ALBERTO GONZALES,  
36

37 Respondent.  
38  
39

40 FOR PETITIONER: Joan Xie, New York, New York.  
41

42 FOR RESPONDENT: Peter D. Keisler, Assistant Attorney  
43 General, Civil Division, Linda S.

1                   Wernery, Assistant Director, Debora  
2                   Gerads, Trial Attorney, Office of  
3                   Immigration Litigation, U.S. Department  
4                   of Justice, Washington, D.C.

5           UPON DUE CONSIDERATION of this petition for review of a  
6   decision of the Board of Immigration Appeals ("BIA"), it is  
7   hereby ORDERED, ADJUDGED, AND DECREED, that the petition for  
8   review is DENIED.

9           Petitioner Jiemin Shao, a native and citizen of the  
10   People's Republic of China, seeks review of a December 22,  
11   2006 order of the BIA affirming the July 25, 2005 decision  
12   of Immigration Judge ("IJ") Douglas Schoppert denying his  
13   applications for asylum, withholding of removal, and relief  
14   under the Convention Against Torture ("CAT"). In re Jiemin  
15   Shao, No. A97 954 422 (B.I.A. Dec. 22, 2006), aff'g No. A97  
16   954 422 (Immig. Ct. N.Y. City July 25, 2005). We assume the  
17   parties' familiarity with the underlying facts and  
18   procedural history of the case.

19          When the BIA agrees with the IJ's conclusion that a  
20   petitioner is not credible and, without rejecting any of the  
21   IJ's grounds for decision, emphasizes particular aspects of  
22   that decision, we review both the BIA's and IJ's opinions -  
23   including the portions of the IJ's decision not explicitly  
24   discussed by the BIA. Yun-Zui Guan v. Gonzales, 432 F.3d

1 391, 394 (2d Cir. 2005). We review the agency's factual  
2 findings, including adverse credibility determinations,  
3 under the substantial evidence standard, treating them as  
4 "conclusive unless any reasonable adjudicator would be  
5 compelled to conclude to the contrary." 8 U.S.C. §  
6 1252(b)(4)(B); see, e.g., Zhou Yun Zhang v. INS, 386 F.3d  
7 66, 73 & n.7 (2d Cir. 2004). However, we will vacate and  
8 remand for new findings if the agency's reasoning or its  
9 fact-finding process was sufficiently flawed. Cao He Lin v.  
10 U.S. Dep't of Justice, 428 F.3d 391, 406 (2d Cir. 2005).

11 Substantial evidence supports the IJ's adverse  
12 credibility finding in this case. First, the IJ reasonably  
13 doubted the authenticity of Shao's Chinese ID card,  
14 purportedly issued on June 7, 2004. Shao claimed that his  
15 family requested that this card be issued, and sent it to  
16 him in the United States, after the immigration authorities  
17 confiscated his old card upon his entry into the United  
18 States. As the IJ noted, however, this explanation could  
19 not have been accurate when Shao did not enter the United  
20 States until June 24, 2004. The record thus supports the  
21 IJ's inference that the ID card was back-dated and therefore  
22 inauthentic. See Siewe v. Gonzales, 480 F.3d 160, 168-69

1 (2d Cir. 2007). Moreover, because Shao submitted the ID  
2 card to establish his identity, a central element of his  
3 claim, the IJ reasonably found that the suspect nature of  
4 this document detracted from his credibility overall. See  
5 Matter of O-D-, 21 I. & N. Dec. 1079, 1083 (B.I.A. 1998).

6 In addition, we find no error in the IJ's reliance on  
7 discrepancies relating to Shao's claim that his wife was  
8 forced to have an abortion, namely: (1) Shao's inconsistent  
9 testimony regarding how many months his wife was allowed to  
10 wait between the birth of her first child and her IUD  
11 insertion; and (2) the inconsistent explanations he and his  
12 wife offered for why she was allowed to delay the IUD  
13 insertion. These inconsistencies, combined with the IJ's  
14 observations regarding Shao's hesitant, non-responsive  
15 demeanor, adequately support the adverse credibility  
16 finding. See Tu Lin v. Gonzales, 446 F.3d 395, 402 (2d Cir.  
17 2006); Majidi v. Gonzales, 430 F.3d 77, 81 n.1 (2d Cir.  
18 2005). Having found that the adverse credibility finding is  
19 supported by substantial evidence, we need not decide  
20 whether petitioner's claim could survive Shi Liang Lin v.  
21 U.S. Dep't of Justice, 494 F.3d 296, 312-13 (2d Cir. 2007)  
22 (en banc).

1 Because Shao's withholding and CAT<sup>1</sup> claims were also  
2 premised on his wife's alleged abortion, these claims were  
3 also properly denied. See Paul v. Gonzales, 444 F.3d 148,  
4 155-56 (2d Cir. 2006); Xue Hong Yang v. United States Dep't  
5 of Justice, 426 F.3d 520, 523 (2d Cir. 2005).

6 \_\_\_\_\_For the foregoing reasons, the petition for review is  
7 DENIED. Any pending request for oral argument in this  
8 petition is DENIED in accordance with Federal Rule of  
9 Appellate Procedure 34(a)(2), and Second Circuit Local Rule  
10 34(d)(1).

11  
12 FOR THE COURT:

13 Catherine O'Hagan Wolfe, Clerk  
14

15 By: \_\_\_\_\_

16 Oliva M. George, Deputy Clerk

---

<sup>1</sup>Shao did not challenge the denial of CAT relief meaningfully in his brief to the BIA, as he was required to do in order to exhaust his administrative remedies. See Karaj v. Gonzales, 462 F.3d 113, 119-20 (2d Cir. 2006). However, because the BIA nonetheless considered the CAT claim on the merits, his failure to exhaust this claim is excused. See Xian Tuan Ye v. DHS, 446 F.3d 289, 295-96 (2d Cir. 2006).